must reject his claim that he is a natural-born legitimate son of Lai Teng Fong.

As to the issue raised in this petition as to whether Lai Kar Soon is a natural-born or adopted son of the deceased, I am of opinion that if his claim is seriously raised he should have been represented by a next friend and I make no ruling as to his relationship to Lai Teng Fong deceased, but I call attention to the point that the defendant claims that Lai Kar Soon was born to Wong Pik Ying in Kandang Kerbau maternity hospital, Singapore, in 1934, but produces no birth certificate, and Lai Ngee Moey gives the birth date as 1935.

As to the question of the jewellery jar, that too I consider should be separately considered if necessary by a separate suit.

There will be judgment for the plaintiff in this suit with costs to be paid by the defendant, Letters of Administration will issue to the plaintiff with the usual security.

Judgment for the Plaintiff.

SOO GOON LIEW v. LOH MOOI FATT.

[App. Civ. Juris. (Thomson, J.), December 6, 1949]

[Ipoh — Civil Suit No. 43 of 1949]

Attachment of debt — Civil Procedure Code, ss. 283 and 288 — Assignment of debt to partnership — Notice.

This was an appeal from a decision of the Acting Assistant Registrar, Ipoh.

On the 23rd June, 1949, judgment was entered against one Chin Swee Loon (hereinafter referred to as 'the debtor') in favour of the respondent for $2,231 and costs. The judgment was not satisfied. The debtor was at that time engaged in the construction of certain buildings for the Government at Ipoh, and in connection with that work had entered into a contract with the Public Works Department. On 9th September, 1949, there was owing to the debtor by the Public Works Department a sum of $2,415.37 and the respondent attached that debt. In the meantime, on 5th May, 1949, the debtor had entered into a contract with the Lock Construction Company of Penang the terms of which were embodied in a written agreement. By clause 6 of the said agreement the debtor undertook to hand over to the Lock Construction Company all payments made to him by the Public Works Department in pursuance of the contract.

Held that the debt in question was not one that could be attached by way of execution by the respondent on 9th September, 1949.

Cases referred to:—

(1) *In re General Horticultural Company, Ex parte Whitehouse* L.R. 32 Ch. D. 512.

(2) *Badeley v. Consolidated Bank* L.R. 34 Ch. D. 536.

(3) *Holt v. Heatherfield Trust, Ltd.* L.R. (1942) 2 K.B. 1.

(4) *Badeley v. Consolidated Bank* L.R. 38 Ch. D. 238 at p. 257.

APPEAL FROM REGISTRAR.

Tan Cheng Hock for the Appellant.

Chin Swee Onn for the Respondent.

The facts and arguments sufficiently appear from the Judgment.

Cur. Adv. Vult.

Thomson, J. : — This is an appeal from a decision of the Acting Assistant Registrar, Ipoh.

The facts are not in dispute, but for a proper understanding of the matter it is necessary that they should be recapitulated here.

On 23rd June, 1949, judgment was entered against Chin Swee Loon (to whom I shall henceforth refer as 'the Debtor') in favour of the present Respondent for $2,231 and costs. That judgment was not satisfied. The Debtor was at the time engaged in the construction of certain buildings for the Government at Ipoh, and in connection with that work had entered into a contract with the Public Works Department. On 9th September, 1949, there was owing to the Debtor by the Public Works Department in respect of that contract a sum of $2,415.37 and the Respondent attached that debt under section 292 of the Civil Procedure Code on his judgment debt.

In the meantime, on 5th May, 1949, the Debtor had entered into a contract with the Lock Construction Company of Penang the terms of which were embodied in a written agreement. That agreement recited that the Debtor had obtained a Public Works Department contract for the performance of certain work at Ipoh and that he had agreed to carry out the work "on a joint venture account" with the Lock Construction Company. The parties were to "constitute a syndicate" under the style of Chin Swee Loon and Lock Construction Company, and it was agreed that the working capital should be provided by the Lock Construction Company who would be entitled to charge interest on the amount advanced at the rate of 80 cents per $100 per month. A bank account was to be opened in the names of the Debtor and the present Appellant, who is described as "the authorised representative of the said Lock Construction Company at Ipoh", the use of which was to be confined to the receipt of remittances from the Lock Construction Company and the payment of expenses incurred on account of the contract, and payments made by the Public Works

Department were to be dealt with in accordance with the following provision :—

"6. The said Chin Swee Loon shall hand over all payments made by the P.W.D. on account of the said contract to the said Lock Construction Company, and whenever payment is made by cheque, to duly endorse the said cheque for payment to the said Lock Construction Company." (sic.).

All profits and losses were to be borne equally between the Debtor and the Lock Construction Company. The agreement contained a number of other provisions but none of these are of importance in the present case.

The amount of $2,415 which was attached by the Respondent was a payment due to the Debtor under the contract which formed the subject matter of the agreement of 5th May, 1949, between the Debtor and the Lock Construction Company, and on 20th September, 1949, an application was made to the Court by Soo Goon Liew the present Appellant objecting to the attachment and praying for its removal. In his affidavit he stated that he was the Manager of the Syndicate formed by virtue of the agreement of 5th May, 1949, and concluded that the money (it was really the debt) that had been attached belonged to the Syndicate.

The objection was lodged under section 298 of the Civil Procedure Code and the parties consented to it being disposed of forthwith under section 299(ii). The matter was heard by the Acting Assistant Registrar who dismissed the objection. He has set out his grounds for doing so with great lucidity and they amount to this, that the Public Works Department was not a party to the agreement between the Debtor and Lock Construction Company, that that Department was not bound to recognise any claim that might be made on it by anybody but the Debtor, and that consequently the debt due by it to the Debtor was capable of being attached and was properly attached by the Respondent. Against that decision of the Assistant Registrar, the Objector has now appealed.

The property which has been attached is property in the possession of a public officer, but for the purposes of the present proceedings what is of importance to observe is that it consists of a debt. The law relating to attachment of debts is to be found in sections 283 and 288 of the Civil Procedure Code, and substantively does not materially differ from the law in England which is to be found in R.S.C., O.45 r.1 which reproduces the relevant provisions of the Common Law Procedure Act, 1854 which in its turn extended to debts in general those provisions of the Judgments Act, 1838, which enabled a judgment creditor to obtain by way of execution a charging order on stocks or shares belonging to his debtor. The procedure under the two systems is different, although the difference is more than anything else one of nomenclature, but there is no material difference as to what may be attached. Under section 283 of the Civil Procedure Code it is "debts .... belonging to the judgment debtor or over which .... he has a disposing power which he may exercise for his own benefit" and under R.S.C. O.45 r.1 it is "all debts owing or accruing" to the judgment debtor from a third person who is indebted to him.

Pecuniary embarrassment is a prolific mother of litigation, and there is a considerable body of authority on the point of what debts may be attached by way of execution, none of which was brought by counsel to the notice of the Assistant Registrar when he heard the present objection.

The first case to which I would refer is *In re General Horticultural Company, Ex parte Whitehouse*[1]. That was a case where a judgment creditor had sought to attach a debt due to his debtor which had already been assigned to other parties but of the assignment of which the party owing it had not had notice at the time when its attachment was sought. Chitty, J., after stating that he proposed to decide the case on broad principles went on to say :—

"The Common Law Procedure Act, 1854, is, so far as attachment of debts is concerned, in pari materia with 1 & 2 Vict. c. 110, (i.e. the Judgments Act, 1838), and as to a charging order under these latter Acts it has now been settled that it charges only what the judgment debtor can himself honestly deal with; that rule is now settled. Order XLV. is in pari materia with both the Acts I have mentioned. . . . . I see no reason why any Act of Parliament or Rules of Court should be so interpreted as to make a man do a dishonest act. . . . . The assignment . . . is binding and good as between assignor and assignee, and the equitable doctrine of notice only comes in as between incumbrances. . . . .

I apply these principles broadly as against the judgment creditor who has obtained the garnishee order here, and say that he can only obtain what the judgment debtor could honestly give him."

In the case of *Badeley v. Consolidated Bank*[2], where the facts were not dissimilar from those in the present case, Stirling, J., referred to the judgment of Chitty, J., in the case of *In re General Horticultural Company*[1] and considered it binding upon him. His decision was upheld by the Court of Appeal (38 Ch. D. page 238) and the headnote of the report of the appeal proceedings reads as follows :—

"a creditor can only attach by a garnishee order such property of his debtor as the debtor could deal with properly and without violation of the rights of other persons. Therefore an equitable charge, obtained before a garnishee order, takes priority of the order, even where no notice of the charge was given."

In the case of *Holt v. Heatherfield Trust, Limited*[3], which is the latest relevant case I can find, the point is thus put by Atkinson, J. :—

"a judgment creditor stands only in the shoes of his debtor and can take only that which the debtor can honestly deal with at the time the order nisi is served. Thus, he is not in such a good position as an assignee, who may defeat an earlier assignee by getting his notice in first."

At this point I return to a consideration of the agreement of 5th May, 1949, between the present Debtor and the Lock Construction Company. By clause 6 of the agreement the Debtor undertook to hand over to the Lock Construction Company all payments made to him by the Public Works Department in pursuance of the contract. In view of what I have stated to be the law, I have to ask myself whether the Debtor could deal with these payments otherwise than by handing them over to the Lock Construction Company, either "honestly" in the word of Chitty, J., or "properly and without violation of the rights of other persons" in the words of Cotton, L.J., in the case of *Badeley v. Consolidated Bank*[4].

To that question there can, in my view, be one answer only. The debtor's intention to assign these payments to the Lock Construction Company is clear beyond doubt, and it is equally clear that whether they were to be so assigned as security for advances made or as monies to be dealt with as the property of a partnership constituted under the agreement of 5th May, 1949, there was ample valuable consideration for the undertaking to assign them. There can, moreover, be no question arising of notice of the assignment being given to the Public Works Department, for what is involved here is the priority of the assignment not in relation to a subsequent assignment of which notice has been given but in relation to an attachment of the debt which forms its subject matter by way of execution.

Having arrived at these results, I have no hesitation in saying that the debt in question was not one that could be attached by way of execution by the Respondent on 9th September, 1949. The appeal is therefore allowed with costs to the Appellant and it is ordered that the attachment be removed from the debt.

Appeal allowed.

KWONG SHIN KONGSI v. T. KADERBHOY.

[Court of Appeal (Willan, C.J., Pretheroe and Taylor, JJ.) December 19, 1949]

[K.L.—Civil Appeal No. 10 of 1949]

Landlord and Tenant—Control of Rent Ordinance, 1948, s. 10—Special case for opinion of High Court—Whether an appeal lies against such opinion.

In this case the Rent Assessment Board, Kuala Lumpur, stated a special case for the opinion of the High Court under s. 10 of the Control of Rent Ordinance, 1948, and the Judge of the High Court after hearing this special case remitted his opinion to the Board.

The appellants appealed against the said opinion and the respondent raised a preliminary objection that no appeal lies.

Held, that there is no right of appeal from the opinion of the High Court under s. 10 of the Control of Rent Ordinance, 1948.

Cases referred to :—

(1) *Ex parte The County Council of Kent and the Council of the Borough of Dover* (1891) 1 Q.B. 725.

(2) *In re Knight and Tabernacle Permanent Building Society* (1892) 2 Q.B. 613.

(3) *In re Kirkleatham Local Board and Stockton and Middlesborough Water Board* (1893) 1 Q.B. 375 at p. 380.

CIVIL APPEAL.

B. J. P. Joaquim and *M. Edgar* for the Appellants.

W. G. W. Hastings for the Respondent.

Cur. Adv. Vult.

The judgment of the Court, with which Pretheroe and Taylor, JJ. agreed, was delivered by :—

Willan, C. J. :—Under section 10 of the Control of Rent Ordinance, 1948, (hereinafter in this judgment referred to as "the Ordinance") the Rent Assessment Board at Kuala Lumpur (hereinafter in this judgment referred to as "the Board") stated a special case for the opinion of the High Court.

In so far as they are relevant to this judgment, the facts are that the respondent is the tenant of a shop house, and the appellants, who occupy a portion of the shop house, claim that they are sub-tenants of that portion by virtue of an alleged assignment to them by a former sub-tenant.

The proceedings commenced before the Board on an application by the appellants for the rent to be fixed under section 8(3) of the Ordinance.

At the hearing of that application the Board, acting under section 10 of the Ordinance, reserved for the consideration of the High Court the following two questions :—

(a) whether there had been an assignment to the appellants, as pleaded, and

(b) if not, whether the appellants came within the expression "other persons interested" so as to be entitled to apply under section 8 (3) of the Ordinance.

In his opinion, which was remitted to the Board, the Judge of the High Court who heard and determined this special case, answered both those questions